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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1181st MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 21 August 1996, at 3 p.m.

Chairman: Mr. BANTON

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The meeting was called to order at 3.10 p.m

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Draft conclusions of the Committee concerning the tenth to thirteenth periodic reports of Venezuela (CERD/C/49/Misc.16, distributed in the meeting in English only)

Paragraph 13

1. Mrs. ZOU said she did not really understand why the Committee should mention the existence of separate prison facilities for persons of the indigenous population unless racial discrimination was involved.

2. Mr. VALENCIA RODRIGUEZ suggested that the proposed text should be left unamended in view of his intended revision of paragraph 19, which dealt with the same point.

Paragraph 14

3. Mr. VALENCIA RODRIGUEZ proposed deleting the paragraph as it reflected an idea already expressed in the second part of paragraph 2.

Paragraph 19

4. Mr. VALENCIA RODRIGUEZ proposed that the Committee should recommend that the State party should provide additional information on the reasons for maintaining separate prison facilities for members of the indigenous population and that the beginning of the paragraph should be redrafted accordingly.

5. The draft conclusions of the Committee concerning the tenth to thirteenth periodic reports of Venezuela, as a whole, were adopted, as orally amended.

Draft conclusions of the Committee concerning the tenth periodic report of Zaire (CERD/C/49/Misc.18, distributed in the meeting in English only)

Paragraph 16

6. Mr. CHIGOVERA wondered whether the provisions of the law referred to in this paragraph actually amounted to racial discrimination or whether they simply imposed a number of additional conditions which were applicable to all Zairians.

7. Mr. van BOVEN said that even if the law was not intended to be discriminatory, it undeniably was in practice, particularly as far as the Banyarwanda were concerned.

8. Mr. GARVALOV recalled that he had mentioned the non-discriminatory character of the Zairian nationality law when the State party's report was being considered. There was therefore no reason to amend the paragraph.

Paragraph 22

9. The CHAIRMAN suggested that the word order in the third line of the text might be amended to read "to prevent raids by former FAR members into Rwanda ...".

Paragraph 27

10. Mr. SHERIFIS said he understood that the High Commissioner for Human Rights was to meet the Zairian Minister of Justice the following day for the signing of the agreement referred to in the text. It would therefore be preferable to state that the Committee welcomed the signing of the agreement and appealed for its prompt implementation.

11. Mr. WOLFRUM said that, according to his own information, the situation was quite different and the agreement might not be finalized for some time.

12. Mr. van BOVEN said that, despite the repeated promises of the Zairian authorities, including at the last session of the Commission on Human Rights, the signing of the agreement had been pending for 18 months. It would therefore be premature for the Committee to welcome it.

13. Mr. DIACONU suggested deleting the words "and the implementation" in the second line of the initial text, as they referred to the implementation of the agreement.

14. The CHAIRMAN said that the initial text would be retained, with Mr. Diaconu's amendment, on the understanding that, if the situation changed the following day, Mr. Sherifis' proposal would be considered adopted.

Paragraph 28

15. Mr. GARVALOV said that, while he could accept the proposed text, he would have preferred the State party's periodic report and the Committee's conclusions to be disseminated in all the languages of Zaire, in accordance with the wording adopted for the Committee's conclusions concerning the reports of other countries where several languages were used.

REPORT OF THE COMMITTEE TO THE GENERAL ASSEMBLY AT ITS FIFTY-FIRST SESSION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION (agenda item 9)

16. The CHAIRMAN suggested that, at the beginning of the Committee's report to the General Assembly, mention should be made of the problems caused by the fact that documents were not available in all working languages because of the reduced capacity of the translation services.

17. It was so decided.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Situation in Liberia

18. Mr. WOLFRUM (Rapporteur for Liberia) said that further useful information on Liberia could certainly be provided by Mr. Ahmadu who was very familiar with the situation, particularly since forces from his country, Nigeria, were involved in the peace-keeping operations in Liberia. It should be understood from the outset that the situation in Liberia clearly fell within the purview of the Committee, for although the conflict there was internal, the factions were split along ethnic lines.

19. At the end of 1989, violent clashes had taken place between the Liberian army and the rebel forces of the National Patriotic Front of Liberia (NPFL) led by Charles Taylor, who had then proclaimed himself President of an interim administration. However, dissension within Charles Taylor's faction had degenerated into ethnic conflicts which had claimed the lives of many civilians. In August 1990, a conference of the main parties involved convened by the Economic Community of West African States (ECOWAS) in the Gambian capital Banjul, had elected Amos Sawyer President of an interim government of national unity. However, in September, the peace settlement proposed by the new President had been rejected by Charles Taylor. In February 1991, at a meeting in Lomé (Togo), the factions had concluded another agreement for the appointment of a new interim government and presidential and legislative elections had been called for October 1991. Armed clashes had nevertheless followed. A new agreement for disarming the factions concluded between Amos Sawyer and Charles Taylor in Yamoussoukro in September 1991 had been reaffirmed at a summit meeting in Geneva in April 1992. However, in December 1992, Charles Taylor had insisted that the disarming procedure should be monitored by the United Nations.

20. Early in April 1993, the ECOWAS Monitoring Group (ECOMOG) announced that it had gained control of the port of Buchanan. In the same month, the United Nations Security Council had condemned the attacks on ECOMOG and implied that the United Nations was prepared to undertake further measures against any faction that failed to comply with the Yamoussoukro Agreement. In July 1993, a further peace agreement had been signed by the parties in Cotonou (Benin) and further negotiations between the parties to the conflict had been held in February 1994 and again in August 1994. In September 1994, the factions had signed another peace agreement providing for the immediate cessation of hostilities and the establishment of a reconstituted five-member Council of State representing the various factions. Presidential and legislative elections had been scheduled for October 1995 and the new organs of government were to be installed in January 1996. However, the provisions of the agreement had promptly been criticized. Although in January 1995 the ECOWAS Heads of State had proposed expanding the membership of the Council of State, the negotiations had failed because of Charles Taylor's demand that he be made Chairman of the Council.

21. The most recent agreement, signed on 19 August 1995 in Abuja (Nigeria), had been put into effect in so far as a new Council of State had been installed pending the elections, and a cease-fire had been declared. The

elections scheduled for August 1996 had not taken place and there had been some cease-fire violations, but all the parties had seemed resolved to abide by the new time-table recently drawn up by the heads of State and government who were members of the ECOWAS Committee of Nine on Liberia. The time-table provided for the extension of the Abuja Agreement until 15 June 1997; monitoring of the cease-fire and disengagement of the warring factions by ECOMOG and the United Nations Observer Mission in Liberia (UNOMIL), as well as by the interim government and completion of the operation by 31 January 1997; and deployment of ECOMOG forces in safe havens during that same period. The Committee of Nine had also decided to sanction recalcitrant factions. The communiqué setting out those decisions had been signed by, among others, Charles Taylor and by the leader of the NFPL, who was a member of the Council of State, as well as by the Minister of Defence.

22. As that brief account showed, a return to normality was under way and, despite the extreme brutality of the civil war, it was possible to see a viable future. The determination of the African States, in particular, was an encouraging sign. The Committee itself might have been able to influence events if it had acted soon enough. But, for the time being, all it could do was take note of the positive developments, offer its assistance and decide to keep the situation in Liberia under review. As the disarmament process was to be completed by 31 January 1997, it would be able, at its next session, to decide whether the situation still fell within the scope of agenda item 4.

23. Mr. AHMADU began by noting that efforts to resolve the Liberian situation had been marked by a series of failures: the African peace-keeping force had had no peace to keep and had been unable to intervene; the many successive agreements had not been observed; and power had passed from hand to hand without bringing peace. The United Nations itself had not intervened until after the failure of the eighteenth agreement.

24. The latest effort, the Abuja agreements, seemed to be working, as the main factions had accepted the measures laid down for their disarmament and disengagement and for the elections, and the authorities were determined to bring the warlords to heel. The process would be gradual and should be successful, as a number of African countries involved had threatened to withdraw their troops if it failed.

25. In his view, the Committee should appeal to the international community to provide the necessary logistical support to the ECOWAS countries and ECOMOG forces and urge the United Nations to extend the mandate of UNOMIL, as it had undertaken to do if the leaders of the warring factions complied.

26. Mr. de GOUTTES said that the Committee might also refer to the report of the Special Rapporteur on the question of extrajudicial, summary or arbitrary executions (E/CN.4/1996/4) which mentioned executions of civilians, including women and children, many of them ethnically motivated, and the impunity enjoyed by those responsible because of the lack of any judicial system.

27. Mr. GARVALOV asked whether the Committee should not decide to keep the situation in Liberia on the agenda under item 4, until such time as it could

assess the effectiveness of the latest solutions contemplated, and resume consideration of the situation at that time, even if it had to request Liberia urgently for information.

28. Mr. FERRERO COSTA suggested that the Committee should go beyond what Mr. Wolfrum had proposed by stressing that the problem was the result of ethnic conflicts and that the situation was grave and expressing the hope that the process currently under way would continue in the right direction.

29. The CHAIRMAN suggested that a drafting group comprising Mr. Wolfrum, Mr. Ahmadu and Mr. Ferrero Costa should draft a text on Liberia for consideration at the following meeting.

30. It was so decided.

Draft decision on Bosnia and Herzegovina (CERD/C/49/Misc.11/Rev.2) (continued)

31. Mr. van BOVEN recalled that the current wording of paragraph 3 was not acceptable to all members and submitted to the Committee a different wording proposed by Mr. Shahi. The new version expressed the Committee's fears, for all the reasons listed in the second part of the existing paragraph, and went on to express the fervent hope that, when held the following month, the elections would be free, fair and democratic. He himself would prefer to keep the existing amended text as proposed earlier by Mr. Sherifis, which stressed the Committee's preoccupations rather than its optimism.

32. Mr. WOLFRUM said that, while well-intentioned, Mr. Shahi's initiative in its current form might nevertheless appear somewhat cynical, in that it was unlikely that anybody having expressed such fears could sincerely hope for free elections.

33. Mr. YUTZIS, adding to what had been said by Mr. Wolfrum, said that, having described the factors impeding the holding of free elections, the Committee should then call for those factors to be eliminated, rather than expressing an abstract hope which was incompatible with the situation described. He was prepared to vote for the text proposed by Mr. van Boven.

34. Mr. FERRERO COSTA proposed that the Committee should vote on Mr. van Boven's text as modified earlier by Mr. Sherifis.

35. After an exchange of views in which Mr. FERRERO COSTA, Mr. CHIGOVERA, Mr. SHAHI and Mr. GARVALOV took part on whether the text proposed by Mr. Shahi was an amendment or an entirely new text, the CHAIRMAN suspended consideration of the decision on Bosnia and Herzegovenia to give the floor to the High Commissioner for Human Rights.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

Exchange of views between the High Commissioner for Human Rights and the Committee

36. Mr. van BOVEN said that he had read with great interest the document submitted to the General Assembly on the restructuring of the Centre,

entitled: Programme budget for the 1996-1997 biennium - Restructuring of the Centre for Human Rights - Report of the Secretary-General (A/C.5/50/71), which had been circulated to Committee members. He wished to raise three questions concerning the restructuring, purely from the perspective of the Committee.

37. Firstly, it was stated that the restructured Centre would comprise three branches (A/C.5/50/71, paras. 15-18), namely, the Research and Right to Development Branch, the Support Services Branch and the Activities and Programmes Branch. The work of human rights treaty bodies, the Commission on Human Rights and the Sub-Commission would be handled by the Support Services Branch, which seemed perfectly logical. Would that Branch provide technical services? They were highly important for the Committee. For example, when considering the report of a State party, the Committee needed basic services such as analyses of the existing documentation on the State party in question, preparation of its work, etc. The Committee had in fact already received such assistance from the secretariat, which had prepared preliminary draft conclusions concerning each of the States whose reports were considered by the Committee. That was a demanding task which required knowledge of the Convention and of the Committee's practices, as well as certain specialized knowledge which could not be acquired without some continuity in the staff employed by the Centre. In recent years, there had been many regrettable changes in the composition of the Centre's staff.

38. Secondly, a number of questions concerning racism and racial discrimination considered, for example, in the context of the Third Decade to Combat Racism and Racial Discrimination, would fall within the purview of the Research and Right to Development Branch. He would like to see some coordination, with the Support Services Branch participating in research in so far as it was responsible for the Committee's work. That point had been raised in connection with the seminar to be held in September to evaluate the Committee's activities.

39. Thirdly, he noted that assistance to special rapporteurs and representatives, experts and working groups mandated to deal with situations or types of alleged violations of human rights was to be the responsibility of the Activities and Programmes Branch (A/C.5/50/71, para. 17 (h)). That allocation of responsibility was surprising. In view of the advantages of cooperation between special rapporteurs and the Committee, and to provide for better circulation of information, it would seem more logical for the necessary services to be provided by the Support Services Branch, which was to service the treaty bodies.

40. Mr. DIACONU informed the High Commissioner of his concern regarding the seminar to be held in September to evaluate the Committee's activities in connection with the various articles of the Convention. Two members of the Committee were to submit a report on two articles of the Convention and he had no doubt that they would present the Committee's activities as a whole in a proper perspective.

41. His concern arose from the fact that the seminar would, as such, draft a report and reach conclusions. That would have two consequences for the Committee. Firstly, it would have to consider the report and its conclusions at a meeting, which would reduce the time available for its proper task of

considering the reports of States. Secondly, the seminar's conclusions could raise difficulties for the Committee with regard to States parties if they concerned the Committee's methods of work and its interpretation of the Convention. The very principle of the independence of experts was at stake. The High Commissioner could help the Committee in that respect, in that the secretariat could ensure that the seminar's evaluation focused not on the Committee's methods of work, but on the worldwide implementation of the Convention, on the situation with regard to racial discrimination throughout the world, on the Convention's contribution to combatting racial discrimination and on what might be done in future in that regard within the United Nations community.

42. Mr. de GOUTTES assured the High Commissioner that he had given the Committee a full account of the talks they had had on 6 August following the exchanges of views with the Committee.

43. He associated himself with the comments made by Mr. van Boven and Mr. Diaconu and also drew the High Commissioner's attention to the effect of the United Nations financial difficulties on the Committee's work, particularly with regard to working languages. With only two exceptions, the Committee had been compelled to adopt its conclusions on the reports of States parties on the basis of the only text available, namely the English text. That was an unsatisfactory situation. A note expressing the Committee's concern in that regard would be included in its report to the General Assembly.

44. With regard to the situation in Burundi, he asked the High Commissioner to provide the Committee with the latest available information on cooperation between the United Nations and Burundi. The High Commissioner had made known his wish to see the number of human rights observers increased. Had he obtained satisfaction? Any other, more recent, information from the High Commissioner regarding the situation in Burundi would be welcome.

45. Mr. GARVALOV said that new ways must be found of strengthening cooperation between United Nations human rights bodies and the human rights treaty monitoring bodies. Meetings could be held, for example, between representatives of both to consider some of the priorities in the human rights field. While those priorities had not changed since the adoption of the Vienna Declaration and Programme of Action in 1993, the relative importance accorded to each of them would appear to need adjustment. An example of such cooperation was the meeting held with representatives of CERD in 1995 in the office of the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

46. Secondly, he would like to see closer cooperation between the treaty bodies and the special rapporteurs appointed by the Commission on Human Rights. Since the Commission's appointment of a Special Rapporteur on contemporary forms of racism, the Committee had had only one opportunity to meet him for an exchange of views. The Committee, which comprised 18 members, had a vast amount of information which it could make available to the Special Rapporteur. Such cooperation would therefore be mutually beneficial. Thirdly, he called on the High Commissioner to continue to avail himself of the Committee's combined specialized knowledge. Fourthly, he drew the High

Commissioner's attention to the importance attached by the Committee to early warning and urgent procedures in identifying situations and problems involving racism and racial discrimination. He expressed the hope that the High Commissioner would continue to support the Committee in that regard.

47. With regard to the planned new structure of the Centre on Human Rights (A/C.5/50/71), he expressed surprise that one of the branches had been named the "Research and Right to Development Branch". Why give special treatment to the right to development? Did it not simply fall within the category of economic rights?

48. Mr. SHERIFIS thanked the High Commissioner for the information he had provided on efforts to achieve wider dissemination and universal ratification of the Convention. However, ratification of the Convention by a State was not enough; most important was its implementation.

49. He hoped to be able to count on the High Commissioner's assistance in ensuring implementation of the decisions taken by the Committee. He regretted that the Committee had not been informed about the seminar planned for September. There was perhaps a coordination problem which the High Commissioner should look into in the context of the reorganization of the Centre for Human Rights.

50. He welcomed both the creation of the post of United Nations High Commissioner for Human Rights and Mr. Ayala Lasso's appointment to it. In order to carry out his mandate, the High Commissioner would need in particular financial and technical resources. It was to be hoped that they would be made available to him. The Committee would do everything in its power to help him in his task.

51. Mr. AHMADU drew the High Commissioner's attention to the question of countries whose reports were long overdue. Many countries signed the Convention, submitted an initial report and then failed to submit any reports or send representatives, in spite of repeated reminders. The Committee had even been compelled to devise a method of considering the implementation of the Convention in a State party which had not submitted a report or sent a representative. That was quite unsatisfactory. How could those countries be assisted in complying with the obligations they had contracted in signing the Convention?

52. Even if some seminars and symposiums held by the Centre for Human Rights did not directly concern the International Convention on the Elimination of All Forms of Racial Discrimination, the members of the Committee would like to be informed of them so that they could attend meetings held in their own regions, even at their own expense. Such activities afforded them an opportunity to gain fresh insights and increase international awareness of the Convention.

53. Mr. SHAHI recalled that, during the process of preparing for the World Conference on Human Rights, representatives of treaty bodies had agreed to emphasize prevention and urgent procedures. Unfortunately, the Conference had not accepted their suggestions. As the Committee had made specific proposals to the Secretary-General in that connection, particularly with regard to

Rwanda and Burundi, he wondered whether the High Commissioner might prevail on the Security Council and other competent bodies to intervene rapidly in cases of gross violations of human rights, including genocide and ethnic cleansing operations.

54. He suggested that, as the Committee was sometimes obliged to consider the situation in a country without any representatives of the State party concerned being present, it might hold one of its two sessions in New York, where representatives of Member States were more numerous. As the original decision to hold one of the Committee's two sessions in Geneva had been taken for reasons of economy, it was debatable whether it was still valid, particularly given the considerable appreciation in the value of the Swiss franc since then.

55. Mr. AYALA LASSO (United Nations High Commissioner for Human Rights) said he had decided to restructure the Centre because it clearly no longer met the expectations of Member States. According to reports by the United Nations Secretariat in New York, the Centre did not deal with any questions of substance but confined itself to servicing conferences and meetings. Moreover, its activities were completely uncoordinated, and there was no system of self-appraisal and no way of knowing whether, or to what extent, programmes were actually implemented. It had comprised five branches organized on an autonomous basis, each with its own secretariat and entirely cut off from the others. The first aim of the restructuring had therefore been to break down the walls between the various units and set up common procedures and machinery.

56. The new Research and Right to Development Branch would be responsible for collecting new data and analysing information already available, evaluating it and communicating it to other branches to facilitate their work. The Support Services Branch would still be responsible for analysis and research, but using the raw data provided by the Research and Right to Development Branch. As to whether it might not have been better to entrust technical cooperation, operational services and special procedures to three separate branches, he said that, after lengthy consideration, it had been decided, for reasons of efficiency, to have programmes and activities handled by a single branch. For the same reasons, the Activities and Programmes Branch would also be responsible for special procedures support.

57. There was currently unprecedented change taking place in the process of protection and promotion of human rights, and the Centre had to be equal to the task. The new structure to be introduced was not perfect and would certainly require adjustments. It would take time for new traditions to be instituted and well-oiled procedures to be developed.

58. At the current stage, it was difficult to answer all the questions asked, as there were numerous uncertainties which could only be dispelled within the restructuring process itself.

59. Within the new structure, cooperation between the various working groups, treaty bodies and special rapporteurs dealing with similar questions would be of the utmost importance. The secretariat must also be associated with the process. The Centre would not simply encourage contacts, but would

make every effort to facilitate them. In that respect, the contribution of human rights treaty bodies must be accorded its true value. They offered an enormous potential which must be fully tapped.

60. Setting up an early warning system was not easy, as demonstrated by the case of Rwanda. A special rapporteur had drawn the attention of the Commission on Human Rights to the situation in that country three months before the crisis had broken out. However, no decision had been taken. The problem was not simply devising the necessary machinery, but also being able to put the necessary resources in place and use them.

61. Within his mandate, he would do everything in his power to ensure that preventive action became a reality. That had actually been his objective whe he had decided to open a technical cooperation office in Bujumbura in June 1994 and when, some months later, he had proposed deploying a team of observers in Burundi. That latter proposal had actually been approved by the international community and, in particular, by the European Union, which had agreed to finance the deployment of 35 observers. Unfortunately, of the $3.5 million pledged, only 400,000 had been forthcoming, so that it had been possible to send only 5 observers into the field. In addition, recent developments in Burundi had complicated the operation. Sources of financing in the European Union were now wondering whether it was advisable to send mor observers at a time when, for security reasons, United Nations agencies and humanitarian organizations were withdrawing their staff. The operation must continue however and, as soon as funding was available, he would arrange for the deployment of more observers.

62. Regarding overdue reports, he said that he had taken every opportunity to remind States parties of their obligations. For many of them, the proble was that they did not know how to compile a report. That was why more emphasis should be placed on technical cooperation in that respect. An agreement recently concluded with Cambodia, for example, contained a clause the provision of technical assistance to help the Government prepare the reports which it had undertaken to submit. In addition, at a meeting on the question, experts from the Centre had explained to representatives of 10 Cambodian ministries how to prepare such reports. Two Cambodian official had also recently been given appropriate training in Geneva. A seminar on t question was also soon to be held in Latin America.

63. It was quite legitimate for members of the Committee to be informed of activities organized by the Centre. He wished to assure them that, under th new structure, no effort would be spared to improve the circulation of information.

64. The seminar to evaluate the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination was part of the programme of the Third Decade to Combat Racism and Racial Discrimination. In that connection, he drew the Committee's attention to a letter dated 10 May 1996 from Mr. Gaham, Officer-in-Charge of the Legislatio and Prevention of Discrimination Branch, to Mr. Banton informing him about t seminar and the reply received by the Centre on 14 May. Participants in the seminar would consider the obstacles to effective implementation of the Convention and would make observations and proposals which might prove

extremely useful, not only to his own Office, but to all other competent United Nations bodies. The intention was not to criticize the Committee's activities but to work together for the realization of the goals of the Third Decade.

46. Speeding up the Security Council's response to gross violations of human rights was not a simple matter. Action by the Council depended on many factors, among which political considerations weighed very heavily. Moreover, his mandate did not give him direct contact with the Council. He reported to the United Nations Secretary-General, who was responsible for determining whether a human rights situation endangered international peace and security and should therefore be brought to the attention of the Security Council. Nevertheless, he himself consistently ensured that the Secretariat in New York was kept informed of developments in human rights situations so that the necessary measures could be taken.

47. Ending on a positive note, he informed the Committee that he had, that very day, signed an agreement with the Zairian Minister of Justice for the opening of an office in Kinshasa. The necessary funding was already available and it was hoped to have the new office in operation by October.

48. Mr. FERRERO COSTA welcomed the importance attached by the High Commissioner to the need to deal with problems as soon as they arose. Prevention and early warning of gross violations of human rights, particularly grave acts of racial discrimination, would become an increasingly important aspect of the Committee's future work. Cooperation with the High Commissioner for Human Rights in setting up the necessary machinery would be crucial.

The meeting rose at 6 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1182nd MEETING

Held at the Palais des Nations, Geneva
on Thursday, 22 August 1996, at 10 a.m.

Chairman: Mr. BANTON

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Draft decision on Bosnia and Herzegovina (continued)

Draft declaration on Cyprus

* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.1182/Add.1.

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GE.96-18057 (E)

CONTENTS (continued)

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Draft concluding observations concerning the tenth to fourteenth periodic reports of India (continued)

Draft concluding observations concerning reports of States parties considered under second-round reviews

The meeting was called to order at 10 a.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Draft decision on Bosnia and Herzegovina (CERD/C/49/Misc.11/Rev.2) (continued)

1. Mr. SHERIFIS recalled that, although the Committee had unanimously acknowledged the balanced wording of the proposed draft decision, he and others, including Mr. Chigovera, had expressed misgivings about paragraph 3 in the belief that it would be wrong for the Committee to give the impression, in any way whatsoever, that it was against the holding of the forthcoming elections in Bosnia and Herzegovina, even though it might have serious concerns about the manner in which the elections were to be conducted. On the basis of consultations among Committee members, he proposed the insertion of the phrase ", important and advisable as they are," after the words "holding of elections", which he hoped would enable the Committee to adopt the draft decision by consensus.

2. Mr. van BOVEN, Mr. WOLFRUM, Mr. GARVALOV, Mr. YUTZIS and Mr. CHIGOVERA endorsed the proposal.

3. The CHAIRMAN said he took it that the Committee wished to adopt the draft decision, as amended and including the new paragraph 9 proposed by Mr. Shahi, by consensus.

4. It was so decided.

5. The CHAIRMAN said in reply to a question by Mr. de GOUTTES, that he would see to it that the text of the decision was made available to Committee members and distributed as soon as possible.

Draft declaration on Cyprus (CERD/C/49/Misc.34)

6. Mr. WOLFRUM said that the recent incidents that had taken place in Cyprus, which had led to the killing of two young men, were clearly of concern to the Committee under the terms of the Convention. The draft declaration was based, inter alia, on previous statements made by the Committee on similar incidents elsewhere and on past decisions.

7. Mr. CHIGOVERA said that the events in Cyprus warranted a reaction from the Committee and that the draft declaration fully respected the Committee's mandate and established practice.

8. Mr. FERRERO COSTA said that the Committee should avoid giving interpretations of situations rather than facts. The text beginning "as a result of" should therefore be deleted.

9. The CHAIRMAN suggested that the Committee should suspend consideration of the draft declaration on Cyprus for the time being.

10. It was so agreed.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Draft concluding observations concerning the tenth to fourteenth periodic reports of India (CERD/C/49/Misc.6/Rev.1) (continued)

11. The CHAIRMAN drew attention to the revised version of the draft concluding observations, a number of paragraphs of which were still pending.

Paragraph 5

12. The CHAIRMAN proposed the addition of a sentence reading: "The Committee also acknowledges, with high appreciation, the far-reaching measures adopted by the Government to combat discrimination against members of Scheduled Castes and Scheduled Tribes."

13. Mr. RECHETOV, pointing out that the paragraph came under section C, "Positive aspects", said that the words "with high appreciation" were superfluous; otherwise the proposal was acceptable.

Paragraph 6

14. Mr. SHAHI said that the Committee's expression of regret that certain communities did not enjoy representation in proportion to their size had been removed from the earlier version of paragraph 6 (former paragraph 8) on the understanding that it would be inserted elsewhere in the text. However, it had now been omitted altogether and he was unwilling to proceed before being informed of where it was to be inserted.

15. The CHAIRMAN, speaking as a member of the Committee, suggested that, since the subject of paragraph 6 was the composition of the State party's report, and since it referred to both positive and negative aspects, the missing wording might be reinserted into the paragraph and the whole paragraph removed to the introduction, between paragraphs 2 and 3.

16. Mr. CHIGOVERA pointed out that the new paragraph 6 had been adopted after the deletion of the phrase referred to by Mr. Shahi, on the understanding that if it were to be included in the concluding observations, it should be regarded as one of the Committee's concerns, although no specific decision had been taken to include it in section D. The Committee should not reopen a debate on a paragraph that had already been adopted; the matter could be raised when the Committee was considering the principal subjects of concern.

17. Mr. SHAHI objected that the debate had not been concluded since it had been agreed to insert that expression of regret into the section on concerns, but it had been edited out of the text altogether.

18. Mr. RECHETOV said it should be made quite clear which paragraphs remained open to discussion. Unless an error had been found, the Committee could not reopen a debate on paragraphs already agreed upon and adopted by the Committee as a whole. To do so would require a special procedure. He cautioned against creating a dangerous precedent in the adoption process.

19. Mr. GARVALOV said he shared Mr. Shahi's understanding that the Committee had decided to transfer the whole of the second part of the paragraph, after the words "are welcomed", from section C to section D. Agreeing with Mr. Rechetov that reconsideration of observations already adopted would require a formal decision, he was not in favour of reopening the debate, but at the same time urged flexibility to accommodate Mr. Shahi's concerns by moving the latter part of the sentence to section D.

20. Mr. CHIGOVERA endorsed the latter suggestion.

21. The CHAIRMAN said he took it that the Committee agreed that paragraph 6 should end with the words "are welcomed" and that the subsequent expressions of regret both about under-representation of certain communities and failure to submit data as part of the report would be reconsidered under section D.

22. It was so agreed.

Paragraph 12

23. Mr. SHAHI said that the word "abrogation" should be replaced by "lapse", which accurately reflected what had been stated in the report and orally.

Paragraph 21

24. Mr. CHIGOVERA, supported by Mr. WOLFRUM, said that there was no objection to referring to legislation that was in force, but that the Committee should not indulge in speculation and refer to bills, such as the Criminal Law Amendment Bill, that had not yet been passed.

25. Mr. SHAHI quoted from the Amnesty International Report 1996, which stated that many of the same provisions as the Terrorist and Disruptive Activities (Prevention) Act (TADA) - which, it was reported, had been used to detain tens of thousands of political detainees without trial - were contained in the proposed Criminal Law Amendment Bill. The formulation proposed in paragraph 21 of the draft concluding observations was very mild when one considered such reports.

26. The CHAIRMAN pointed out that the objection was not to the formulation but to the fact that the Bill had not yet been adopted. He asked whether Mr. Shahi would be prepared to defer to what appeared to be the majority view and to conclude the sentence with the words "remain in force".

27. Mr. SHAHI said that was unacceptable. The effects of the provisions of the TADA were well documented by authoritative sources. The Committee should apply the same standards when considering all reports.

28. Mr. WOLFRUM, supported by Mr. FERRERO COSTA and Mr. CHIGOVERA, said that he was as strongly opposed to the TADA as anyone else, but that the Committee knew little about the Criminal Law Amendment Bill and had never before referred to pending legislation in its concluding observations.

29. Mr. RECHETOV agreed that the Committee should not criticize a bill before it had even been adopted. Moreover, it was not certain that the Criminal Law Amendment Bill would perpetuate the provisions of the TADA. He did not consider the reports that Mr. Shahi had cited as adequate proof of the facts. He accordingly agreed that the paragraph should end with the words "in force".

30. Mr. SHAHI said that he wished to place on record his dissatisfaction at the deletion of the last part of the paragraph.

31. He suggested that the phrase "some areas of India" should be replaced by "some areas administered by India".

32. Mr. FERRERO COSTA said that the Committee must not be seen to make political statements.

Paragraph 23

33. The CHAIRMAN suggested that a new sentence should be added after the first sentence, reading: "The Committee regrets that certain communities do not enjoy representation in proportion to their size."

34. Mr. CHIGOVERA and Mr. GARVALOV asked whether the phrase "certain communities" was intended to refer exclusively to the Scheduled Castes and Tribes.

35. Mr. RECHETOV said that paragraph 23 should not be amended. Under-representation in the public service was by no means the most serious problem faced by the Scheduled Castes and Tribes.

36. The CHAIRMAN suggested that the new sentence should be placed in a paragraph by itself after the existing paragraph 23.

37. It was so decided.

Paragraph 24

38. The CHAIRMAN invited the Committee to comment on the two alternative versions of the paragraph.

39. Mr. YUTZIS said that the main substantive difference between the two versions was that the first said that the Supreme Court had "reaffirmed the principle" of awarding compensation, and the second that Indian courts "had the jurisdiction" to award compensation. He proposed that the two ideas should be combined in the first version of the paragraph, to read: "... the Supreme Court has jurisdiction to award compensation and has, in some cases, reaffirmed the principle ...".

40. Mr. DIACONU pointed out that it was the Supreme Court which established the principle of awarding compensation and that lower courts then had the jurisdiction to award that compensation. He preferred the second version of the paragraph.

41. Mr. CHIGOVERA said that he had prepared the second version of the paragraph as a compromise. In any case, under article 6 of the Convention, States parties were obliged to provide "effective protection and remedies", although not necessarily by means of specific legislation. Paragraph 32 of India's report (CERD/C/299/Add.3) stated that the Supreme Court or a High Court had the power to award compensation under articles 32 and 226 of the Constitution. The "effective protection" laid down in article 6 was therefore provided. He could not accept the first version of the paragraph.

42. Mr. SHAHI said that, according to the report, only the Supreme Court and the High Courts could award compensation. He accordingly proposed that the second version of the paragraph should be amended to read: "Although it is noted that the Supreme Court and the High Courts have the jurisdiction to award compensation ...".

43. The CHAIRMAN suggested that the Committee should adopt the second version of the paragraph with the amendment suggested by Mr. Shahi.

44. It was so decided.

Paragraph 27

45. Mr. SHAHI proposed that the phrase "in any parts of the country" should be deleted.

Paragraph 28

46. Mr. AHMADU proposed that the word "precise" should be deleted.

Paragraph 29

47. The CHAIRMAN suggested that the word "comprehensive" should be deleted.

Paragraph 31

48. The CHAIRMAN, speaking as a member of the Committee, suggested that the second sentence should be amended to read: "... inviting international observers to monitor elections in certain areas".

49. Mr. WOLFRUM suggested that the whole paragraph should be deleted.

50. Mr. GARVALOV said that the tone of the paragraph implied that India had never held elections before, which was certainly not the case.

51. The CHAIRMAN said that he took it that the Committee wished to delete paragraph 31.

52. It was so decided.

Paragraph 33

53. Mr. YUTZIS said that it had been his idea to suggest a visit to India by Mr. Glélé-Ahanhanzo, Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, which he thought would be a very useful step.

54. Mr. CHIGOVERA said that the Special Rapporteur had his own mandate and would not be accountable to the Committee. Any mission undertaken should be by Committee members at the invitation of the Indian Government, as the mission to Kosovo had been. He proposed that the paragraph should be deleted.

55. Mr. van BOVEN suggested the following wording: "The Committee suggests to the Government of India that it invite Mr. Glélé-Ahanhanzo ... to pay a visit to India, in accordance with his mandate ...". The Special Rapporteur and the Committee were complementary and should work together.

56. Mr. GARVALOV said that the paragraph did not describe the Committee's discussion of India's report and should thus, strictly speaking, be in square brackets. On the substance of the paragraph, he was doubtful about any mission by the Special Rapporteur, who was not a member of the Committee, and felt that the United Nations should concentrate on work by committees and other bodies, rather than individuals. Any visit to India should be undertaken by Committee members under the early warning and urgent procedures, as with the mission to Kosovo, although for the sake of compromise he could accept Mr. van Boven's amendment.

57. Mr. SHERIFIS echoed the views expressed by Mr. Garvalov.

58. Mr. de GOUTTES said that Mr. Yutzis' proposal was a new, but valuable one. It would enable the Committee to contribute to the Special Rapporteur's programme of visits, which had been the subject of much discussion, and would help to coordinate the Committee's work with that of the Special Rapporteur. Of course, the initiative must not be limited to India, and it would need to be further developed in the future. The High Commissioner for Human Rights appeared to approve of the proposal. He accordingly supported the paragraph as it stood, but could also accept Mr. van Boven's amendment.

59. Mr. WOLFRUM said that he, personally, was in favour of Mr. Yutzis' proposal, but there was clearly no consensus among the Committee. Perhaps some other international humanitarian institution, such as the International Committee of the Red Cross, which had more experience than the Committee would be better suited to the task. The Committee's mission to Kosovo had been a success, but an enormous country like India was quite another matter.

60. Mr. AHMADU suggested that the Committee might draw up a list of countries for the Special Rapporteur to visit, which would avoid singling out India. However, since the Committee's time for debate was so short, the best solution might be to delete the paragraph altogether.

61. Mr. SHAHI said that it would be discriminatory to apply the new procedure proposed by Mr. Yutzis to India alone. Perhaps the most appropriate person to undertake a mission to India would be the High Commissioner for Human Rights, but he did not feel that the Committee could suggest such a step. He had been alarmed by Mr. Garvalov's suggestion that the Committee should resort to its early warning and urgent procedures: surely the situation in India did not justify that? If the Committee decided to retain the paragraph, he would agree for the sake of consensus, but he felt that it would require considerable redrafting.

62. Mr. LECHUGA HEVIA said that the paragraph should be deleted, since the proposal was an imposition on the State party and was tantamount to the Committee asking another United Nations body to do its work for it.

63. Mr. FERRERO COSTA said that he doubted whether the Committee should make use of a Special Rapporteur from another body, and he was not convinced that India merited such a procedure more than any other country. Any mission to India should be undertaken by the Committee members themselves.

64. Mr. DIACONU said that the paragraph should be deleted. Any visit made by the Special Rapporteur would be under his own mandate, not the Committee's. There was no need to invoke early warning or urgent procedures: the only reason for a visit to India would be to learn more about the question of caste and decide whether it was an ethnic or a purely social issue. The best people to decide that specific question were the members of the Committee.

65. It was true that the procedure was a new one, but he felt that no other country differed so much from the Committee in its interpretation of its de jure and de facto situation, as India did.

66. Mr. VALENCIA RODRIGUEZ associated himself with the views expressed by Mr. van Boven and Mr. Wolfrum and said it would be more appropriate to apply early warning and urgent procedures in the case of India.

67. Mr. YUTZIS said that, under article 9 (2) of the Convention, the Committee was entitled to make suggestions based on the examination of the reports of States parties. The only restriction on the nature of the suggestions was that the members of the Committee had to agree on them. In the case of paragraph 33, the Committee clearly did not. Although, strictly speaking, the work of the Special Rapporteur on contemporary forms of racial discrimination, xenophobia and related intolerance came under the mandate of the Commission on Human Rights, the nature of his work did complement that of the Committee which should therefore consider how, in the future, the Special Rapporteur could be of assistance.

68. As to visits to India, given the sheer size and population of the country, none of the members of the Committee could possibly spare the time needed properly to investigate the situation there. However, the Special Rapporteur had been appointed specifically for that kind of work, and what was more, he had the necessary logistical support. The question of jurisdiction was irrelevant, it was simply that he could do the job better. It would be wrong to consider that sending him to a country was an imposition.

69. Mr. van BOVEN suggested that the Committee should try to find time to meet with the Special Rapporteur during the fiftieth or fifty-first session.

70. The CHAIRMAN said that other human rights treaty bodies were considering the possibility of optional protocols to provide for visits and other methods of supervision. The Committee should keep itself informed of developments. Given the lack of consensus, he took it that the Committee wished to delete paragraph 33.

71. It was so decided.

72. Mrs. SADIQ ALI said that she dissociated herself from the Committee's draft concluding observations on India.

73. The draft concluding observations concerning the tenth to fourteenth periodic reports of India, as amended, were adopted with the proposed amendments and subject to possible minor drafting changes.

Draft concluding observations concerning States parties considered under the second round reviews (CERD/C/49/CRP.1/Add.14 and 16-24)

74. The draft concluding observations concerning States parties considered under second round reviews were adopted.

The public part of the meeting rose at 11.45 a.m.